

## **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

### **SPECIAL PROVISION**

#### **49 CFR 26.29**

### **PROMPT PAYMENT & RETAINAGE**

#### **PROMPT PAYMENT**

The prime contractor must pay the subcontractor for any amount due from the current progress payment within 20 calendar days of receipt of payment, unless the prime contractor has just cause not to make payment. The subcontractor must notify the project engineer in writing when prompt payment has not been made. If the prime contractor withholds payment from the subcontractor, the prime contractor, upon request of the project engineer, must provide, in writing, the reasons for withholding payment.

If the Department determines that the prime contractor is withholding payment without just cause, interest will accrue pursuant to N.D.C.C. §§ 13-01.1-06 and 13-01.1-02. The prime contractor is responsible for paying the accrued interest starting 20 calendar days after the prime contractor receives payment. If the Department determines there is just cause for withholding payment, interest will not accrue on the amount due.

These prompt payment procedures apply to all tiers of subcontracts.

#### **RETAINAGE**

Prompt payment shall also include the release of retainage monies held within 20 days after the work is satisfactorily completed. Non-bonded subcontractors must submit proof of payment for all material bills and wages to the prime contractor before the prime contractor is required to pay the retainage.

The Department will determine whether the work has been "satisfactorily completed." "Satisfactorily completed" work is work that complies with all the contract requirements and has been measured for final payment in accordance with the contract. It includes providing all necessary final documentation required in the contract. Final documentation may include, but is not limited to: certified payrolls, materials certification, haul road releases, pit receipts of payment, pit releases, night watchman reports, warrantees, operating manuals, product literature, and verification of final quantities, and the DBE Certification (SFN 14268).

The release of retainage applies to all tiers of subcontracts.